

REMARKS

Claims 1-14, 17, 18, 20, 21, and 23-25 are pending.

Claims 15, 16, 19, and 22 have been cancelled.

Claim 26 has been added.

In the Office Action dated January 16, 2009, claims 1-5, 7-12, 14, 15, 17, 18, 20, 21, 24, and 25 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,532,535 (Maffezzoni) in view of HD_Speed (SteelBytes.com); claims 6 and 13 were rejected under 35 U.S.C. § 103(a) as unpatentable over Maffezzoni in view of HD_Speed and U.S. Patent Publication No. 2002/0124124 (Matsumoto); and claim 23 was rejected under 35 U.S.C. § 103(a) as unpatentable over Maffezzoni in view of HD_Speed and CD Speed 2000.

REJECTIONS UNDER 35 U.S.C. § 103

Independent claim 1 has been amended. Support for the amendment can be found in Fig. 2 and the accompanying text of the Specification.

It is respectfully submitted that independent claim 1 is non-obvious over Maffezzoni and HD_Speed.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as held by the U.S. Supreme Court, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

Claim 1 recites computer-readable program code provided in computer-readable storage at the data access drive, where the computer-readable program code is executable by a drive controller at the data access drive for generating drive information and user interface rendering data, and where the drive information comprises a status of the data access drive and an operating speed of the data access drive. Moreover, claim 1 recites a user interface module that outputs the drive information via a user interface in accordance with the user interface rendering data.

Even if Maffezzoni could be hypothetically combined with the HD_Speed reference, the hypothetical combination of the references would not have led to the claimed subject matter. Importantly, it is noted that neither Maffezzoni nor the HD_Speed reference discloses providing computer-readable program code in computer-readable storage at the data access drive, where the computer-readable program code is executable by a drive controller at the data access drive for generating the drive information and user interface rendering data as recited in claim 1.

The Office Action conceded that Maffezzoni fails to disclose such computer-readable program code. 1/16/2009 Office Action at 3. However, the Office Action argued that HD_Speed discloses the claimed features missing from Maffezzoni. *Id.* That assertion is incorrect.

As clearly evidenced by the HD_Speed reference provided with the Office Action, the “disk software” that is the subject of the HD_Speed reference is for use with one of several WINDOWS[®] platforms (indicated as 95, 98, Me, NT4, 2000, and XP operating systems in the HD_Speed reference). The fact that the disk software of the HD_Speed reference is for use with a WINDOWS[®] platform establishes that its disk software is loaded and executed on a host computer that runs such operating system, and is not loaded and executed on a drive controller at the data access drive (which the Office Action had equated with a hard or removable drive in Maffezzoni).

Therefore, even if Maffezzoni and the HD_Speed reference could be hypothetically combined, the hypothetical combination of the references would not have led to the claimed subject matter.

Moreover, it is respectfully submitted that a person of ordinary skill in the art would not have been prompted to combine the teachings of Maffezzoni and the HD_Speed reference. Like the HD_Speed reference, Maffezzoni also describes software executable on a host computer. More specifically, Maffezzoni describes an intelligent backup system that includes a host computer 102 and a peripheral storage device 104 that is able to receive a media cartridge 108. See Maffezzoni, Fig. 1A. To provide the intelligent backup system, Genesis software components are loaded into the host computer. Maffezzoni, 16:60-62 (“During this start up phase, the host computer system loads the Genesis application.”); 42:7-43 (referring to installation of Genesis software in the host computer system). A Genesis preparation wizard, which is part of the Genesis software installed in the host computer, is able to prepare a cartridge 108 in the peripheral storage device 104 to enable the backup system. *Id.*, 10:3-9. Preparation of the cartridge 108 to become Genesis enabled involves writing a Genesis signature ID to the cartridge 108. *Id.*, 14:34-40. In this way, a user can select data from the host computer system to copy as backup data to the peripheral storage device 104. *Id.*, 11:19-22. In response to a system error, the host computer BIOS will inform the user that an error has occurred, and a SpareTire wizard graphical user interface 353 will then be launched, as depicted in Fig. 6B of Maffezzoni. *Id.*, 41:58-62.

The SpareTire wizard depicted in Fig. 6B, which is part of the Genesis software, is a wizard presented by the host computer based on software that is already installed at the host

computer, and not based on “computer-readable program code provided in computer-readable storage at the data access drive,” which was equated by the Office Action with a hard drive or removable drive.

The fact that the Genesis software of Maffezzoni and the disk software of the HD_Speed reference are both executed on the host computer would have led a person of ordinary skill in the art away from the claimed invention. As explained in the Background section of the present application:

Although software may be provided (e.g., on a network computer) that allows the user to view and configure the drives, the user has to install the software before it can be used. In addition, the software may not be compatible with the user’s operating system.

Specification, ¶ [0004]. The teachings of Maffezzoni and HD_Speed reference are similar to what is described in the Background section of the present application—namely, that software related to a drive is executed on a computer instead of a data access drive. Thus, it is clear that a person of ordinary skill in the art would not have been prompted to combine the teachings of Maffezzoni and the HD_Speed reference to achieve the claimed subject matter.

The obviousness rejection of claim 1 is therefore erroneous.

Independent claims 11 and 18 are also similarly allowable over the cited references.

Dependent claims are allowable for at least the same reasons as corresponding independent claims. In view of the allowability of base claims, the obviousness rejections of dependent claims have also been overcome.

With respect to some of the dependent claims, the Office Action cited *Ex Parte Smith*, 83 U.S.P.Q.2d 1509 (BPAI 2007), for the proposition that a “simple substitution” of one known element for another or a “mere application” of a known technique to a piece of prior art does not make a claim patentable. However, the rejections based on this assertion are incorrect, because the Office Action did not cite any objective evidence disclosing the claim elements conceded to be missing by the Office Action from the cited references. Rather than cite to objective evidence, the Office Action merely cited a case to effectively argue that the missing elements would be obvious. Such assertions constitute clear legal error, since the Office Action has merely made a conclusory remark of obviousness without any objective support.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (200312050-1).

Respectfully submitted,



Date: April 13, 2009

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